

REMARKS

Claims 1-47 remain pending in the present application.

RESTRICTION REQUIREMENT

The Examiner has imposed a restriction requirement, and requested that Applicants elect one of three identified groups of claims for prosecution in connection with the present application. The groups of claims are as follows:

Group I claims 1-45, drawn to a sample preparation method for a medium suspected of containing contaminants;

Group II claim 46, drawn to a kit for the determination of contaminants in a medium; and

Group III claim 47, drawn to use of a closed, sterile filter device.

In response to the Examiner's Restriction Requirement, Applicants respectfully elect Group I, Claims 1-45, with traverse. Applicants reserve the right to file a divisional application for the non-elected claims during the pendency of this application.

The Examiner has applied the Unity of Invention standards under PCT Rule 13.1 and 13.2. According to the Examiner, the groups of claims do not relate to a single general inventive concept because they lack the same or corresponding "*special technical feature*." This is because, according to the

Examiner, the invention of claim 46 is known in the art as demonstrated by U.S. Patents 4,591,554 and 5,081,017.

Applicant recognizes that whether or not any particular technical feature makes a contribution over the prior art, and therefore constitutes a "*special technical feature*" may be considered with respect to novelty and inventive step. That is, the Examiner may consider the prior art in making his Unity of Invention determination. In this case, however, the Examiner has not provided more than a brief comment as to how U.S. Patents 4,591,554 and 5,081,017 teaches or suggests each and every feature of the invention defined by the claims of Groups I, II and III. Without this information, Applicants cannot properly respond to the Restriction Requirement. As a result, the basis for the Restriction Requirement is incomplete. If the Examiner maintains the Restriction Requirement, then he should at least point out (by column and line) how the asserted references meet each and every feature of the invention defined by the claims of Groups I, II and III.

Furthermore, Applicant respectfully submits that independent claim 46 (of Group II) contains similar technical features to those set forth in independent claim 1 (of Group I). Accordingly, at least claim 46 should be examined in the instant application.

Further, upon the allowance of a claim with a "*special technical feature*" and/or allowance of a generic claim, Applicant respectfully requests rejoinder

of all claim containing that “*special technical feature*” and/or all claims dependent on that generic claim.

For all of the above stated reasons, reconsideration and withdrawal of the outstanding restriction/election requirement and favorable allowance of all claims in the instant application are earnestly solicited.

ELECTION OF SPECIES REQUIREMENT

The Examiner also submits that Applicants are required to elect a “subspecies” from the following four species to be examined:

Species I contaminants (as described in claim 3);

Species II liquid medium (as described in claim 5);

Species III enzyme (as described in claim 15); and

Species IV substrate (as described in claim 18).

Applicants respectfully elect the following, with traverse: Species I: “Bacteria”; Species II: “Environmental Water”; Species III: “Phosphatases”; and Species IV: “Methylumbelliferyl Derivative”.

In support of traversal, instead of providing specific reasons that the above-identified “species” within the above Species are considered patentably distinct, the Examiner merely makes generic statements such as “these species...are not so linked as to form a single general inventive concept under

PCT Rule 13.1". The Examiner has failed to provide specific reasons why the different "subspecies" within the four Species are considered patentably distinct. Applicants also respectfully traverse the secondary election requirement as requiring election between members of four separate Markush groups. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw this secondary election requirement as unnecessary.

CONCLUSION

Applicants respectfully request that this application be examined on the merits at the earliest possible time.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2548 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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